

APPEAL NO. 022373
FILED OCTOBER 29, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 21, 2002. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____; that she did not have disability; and that the respondent (self-insured) did not waive the right to contest compensability of the claimed injury. The claimant appeals the waiver determination and also challenges the hearing officer's determinations regarding compensability and disability. The self-insured urges affirmance of the hearing officer's decision.

DECISION

We affirm in part and reverse and render in part.

The claimant had the burden to prove that she sustained an injury in the course and scope of her employment and that she had disability as defined by Section 401.011(16). Conflicting evidence was presented on the disputed issues of whether the claimant sustained an injury and whether she had disability. The hearing officer determined that the claimant did not sustain an injury in the course and scope of her employment and that due to the medications prescribed for the complaints, the claimant was unable to obtain and retain employment at her preinjury wages from November 8, 2001, through March 1, 2002. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's findings of fact in this regard are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). However, we will now review the hearing officer's related legal conclusions.

In this case, there is evidence that the claimant has sustained damage to the physical structure of her body. It is undisputed that the self-insured neither initiated the payment of benefits nor denied the claim within seven days after receiving written notice of the claimant's injury. Section 409.021. Prior to the date of the hearing in the present case, the Texas Workers' Compensation Commission determined that the Texas Supreme Court decision in Continental Casualty Co. v. Downs, (Case No. 00-1309), which held that a carrier must adhere to a seven-day "pay or dispute" requirement, would not be followed until the motion for rehearing process in the Texas Supreme Court had been exhausted. See TWCC Advisory No. 2002-08 (June 17, 2002). Recently, in Texas Workers' Compensation Commission Appeal No. 021944-s, decided September 11, 2002, the Appeals Panel applied the Downs decision in determining that a carrier had waived its right to contest the compensability of a claimed injury, explaining that we are now following Downs because, "On August 30, 2002, the Texas

Supreme Court denied the carrier's motion for rehearing, and the *Downs* decision, along with the requirement to adhere to a seven-day 'pay or dispute' provision, is now final."

We affirm that part of the decision that determined that the claimant did not sustain an injury and that the claimant was unable to work due to the effects of medications from November 8, 2001, through March 1, 2002. We reverse the determination that the self-insured did not waive its right to contest the compensability of the claimed injury. We render a new decision that, because the self-insured waived its right to contest compensability of the claimed injury, the claimant's _____, injury is compensable as a matter of law and the claimant had disability from November 8, 2001, through March 1, 2002, in accordance with the hearing officer's fact finding that the claimant was unable to work due to the effects of medication from November 8, 2001, to March 1, 2002.

The true corporate name of the insurance carrier is (self-insured) and the name and address of its registered agent for service of process is

**SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Judge